



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR & ECONOMIC GROWTH
ROBERT W. SWANSON, DIRECTOR

LINDA A. WATTERS
COMMISSIONER

BILL ANALYSIS

BILL NUMBER: House Bill 6359 (House Substitute)

TOPIC: Medicare Supplement Plan Revisions

SPONSOR: Representative Richard J. Ball

COMMITTEE: House Health Policy

Analysis Done: August 23, 2006

POSITION

The Office of Financial and Insurance Services supports this legislation, with the changes being requested in a house substitute.

PROBLEM/BACKGROUND

In 2003 the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) became law. It includes several changes to the requirements for Medicare Supplement policies that are offered in all 50 states. The federal government standardized the language that must be included in all Medicare supplement plans. With the passage of the MMA, some of the standardized plans previously in effect must be changed to exclude prescription drug coverage after January 1, 2006. Additionally, two new plans have been introduced that are already MMA compliant, but not in Michigan's insurance code that addresses Medicare Supplemental policies sold in the state. These two additional plans can now be offered to Michigan residents who have Medicare.

The National Association of Insurance Commissioners (NAIC) developed a revised model regulation for Medicare Supplement policies that states can adopt to make sure their laws comply with MMA requirements. As changes are made to the Medicare program and the accompanying Medicare supplement plans, states must adopt the changes.

In order for Michigan and companies that write Medicare supplement policies to be compliant with the federal standards for Medicare policies, Michigan must adopt the revised language found in the MMA. Although companies can presumably market the new Medicare supplement forms as well as the revised forms as outlined by the federal standards without formal adoption by the Michigan legislature, Michigan regulators would not be able to take direct action against any company who would violate the

federal standards unless those same standards are found in Michigan statute. The change in statutory language is needed to assure that Michigan maintains control over those entities that market and sell Medicare Supplement policies in Michigan.

DESCRIPTION OF BILL

Sections that will need to be amended to place Michigan statute in compliance are found in Chapter 38, Medicare Supplement Policies, of the Insurance Code of 1956, 1956 PA 218.

The proposed legislation amends all of the appropriate sections by replacing Medicare + Choice with Medicare Advantage, which is the new Medicare program for seniors who are enrolled in the nontraditional Medicare program. The Medicare Advantage program has some changes regarding prescription drug coverage and other standard benefits provided under the plans.

The new legislation adds Plans K and L to the group of Medicare Supplement policies that can be offered to state residents. These two plans are unique in many ways, but still must be offered as standardized policies. Other changes affect the plans already in place by removing the options for prescriptions on policies that will renew after January 1, 2006.

Other language throughout the Medicare supplement chapter is changed to integrate all of the changes found in the MMA into that chapter, including the change in the amounts Medicare will pay for specific procedures. The changes do not implement or in any way affect the Medicare Part D program that is also part of the MMA. These changes only affect the Medicare Supplement plans that are sold by private insurance companies in Michigan.

SUMMARY OF ARGUMENTS

Pro

The changes implemented by this legislation makes Michigan law compliant with changes in Medicare Supplement plans adopted at the federal level. Without the changes, Michigan regulators will be at a disadvantage in protecting its citizens from those who do not implement changes in the marketing and selling of Medicare Supplement policies as required.

Con

Michigan does not have a choice whether or not to implement the changes. If the Michigan statute is not amended, the old plans must be modified and the new plans will go into effect. As stated above, not implementing the changes will only make the job of Michigan regulators more difficult.

FISCAL/ECONOMIC IMPACT

OFIS has identified the following revenue or budgetary implications in the bill as follows:

(a) To the Office of Financial and Insurance Services: None

Budgetary:
Revenue:
Comments:

(b) To the Department of Labor and Economic Growth: None

Budgetary:
Revenue:
Comments:

(c) To the State of Michigan: None

Budgetary:
Revenue:
Comments:

(d) To Local Governments within this State: None

Comments:

OTHER STATE DEPARTMENTS

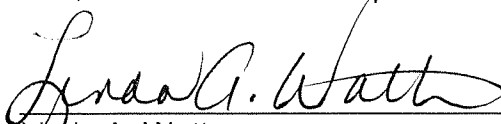
None known.

ANY OTHER PERTINENT INFORMATION

Companies that market Medicare supplement insurance in Michigan have been contacting OFIS to encourage implementation of the changes as quickly as possible. They are interested in being in compliance with both the federal and the state laws.

ADMINISTRATIVE RULES IMPACT

OFIS has general rulemaking authority under the Insurance Code of 1956, 1956 PA 218, MCL 500.100 et seq.



Linda A. Watters
Commissioner

8-23-06

Date

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop
Baltimore, Maryland 21244-1850



Center for Beneficiary Choices
Medicare Plan Policy Group

August 19, 2005

Dear Commissioner/Director/Superintendent:

The Centers for Medicare & Medicaid Services (CMS) administers section 1882 of the Social Security Act, the Federal statutory provision that governs Medicare supplement (Medigap) insurance. As you are probably aware, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173) added a new Medicare prescription drug benefit, and made several amendments to the Medigap statute.¹ Some of the provisions were effective upon enactment, but others required action by the National Association of Insurance Commissioners (NAIC). On September 8, 2004, the NAIC adopted a revised Medicare Supplement Model Regulation that incorporates the MMA changes to Federal Medigap law.

The purpose of this letter is to remind you that, by September 8, 2005, the MMA requires your State to amend its Medigap regulatory program to conform to these changes. This letter also requests that your Department notify us when your State has made the necessary changes.

As you know, the Federal Medigap statute provides that Medigap policies issued in a State are deemed to meet certain Federal requirements if the State's program regulating Medigap policies provides for standards that are at least as stringent as those contained in the NAIC Model Regulation.²

On March 25, 2005, CMS recognized the September 8, 2004 revision of the Model as the applicable NAIC Model Regulation for purposes of the Federal Medigap statute.³ States must amend their regulatory programs by September 8, 2005, to implement all the new Federal statutory requirements and applicable changes to the NAIC Model Standards.⁴

¹ 42 USC 1395(ss)

² 42 USC 1395(ss)(b)(1)

³ 70 FR 15394

⁴ For purposes of complying with Federal Medigap standards and requirements, a state need not adopt the last sentence of section 8.B.(3) and of section 8.D.(1)(c) in the Model Regulation, nor must it require issuers to include the final sentence of the notice in the outline of coverage for plans "A" through "K" (or comparable policies) in section 17.D(4). See 70 FR 15396.

The following changes must be reflected in the State's Medigap regulatory program by that date:

- Require Medigap issuers to provide, during the period September 15 through November 14, 2005, a written disclosure notice to policyholders who currently have a Medigap policy with prescription drug coverage ("Medicare Rx policy"). Require that this disclosure notice use the language provided by CMS to inform individuals who have such a policy about their prescription drug coverage choices once the new Medicare prescription drug benefit goes into effect on January 1, 2006.⁵
- Require issuers to eliminate all prescription drug benefits from Medigap policies held by policyholders who enroll in a Medicare prescription drug plan, effective the date that the Medicare coverage starts.⁶
- To the extent a State wishes to permit or require Medigap issuers to market new policies "K" and "L", incorporate the requirements for those policies, as specified in the federal statute and NAIC Model Regulation, into the State regulatory program before authorizing the sale of the policies.
- To the extent a Medigap Rx issuer offers policies "A", "B", "C", "F" (including the benefit package "F" with a high deductible feature) or new policies "K" or "L" (or comparable benefit packages in the states with "waivers" -- Massachusetts, Minnesota or Wisconsin), require the issuer to offer each such policy to every one of their Medigap Rx policyholders who enrolls in a Medicare prescription drug plan during the period November 15, 2005, through May 15, 2006. Specify that the policy premium cannot be rated up based on health status and the policy cannot impose a preexisting condition exclusion. This guaranteed issue period ends 63 days after the effective date of the individual's Medicare prescription drug coverage.
- For a beneficiary who drops a Medigap Rx policy and later has a right to guaranteed issue of the same policy under section 1882(s) (42 U.S.C. §1395ss(s)), require the original issuer, for any policies issued pursuant to that section on or after January 1, 2006, to remove the prescription drug benefit from the policy. Also require all Medigap issuers in the State to offer those individuals any policy "A", "B", "C", "F", "K" or "L" (or similar policies in waiver states) the issuer offers in the State. Specify that the policy premium cannot be rated up based on health status and the policy cannot impose a preexisting condition exclusion.

⁵ Copies of the applicable notices are posted on CMS' Website at www.cms.hhs.gov/medicarereform/CCguidances.asp

⁶ Guaranteed renewability applies to such modified policies, just as it does to all other Medigap policies. Thus, an issuer must guarantee the renewal of any Medigap Rx policy with the drug benefits for people who do not enroll in Medicare prescription drug coverage, and without the drug benefits for people who do enroll.

- As of January 1, 2006, prohibit the sale of Medigap policies that include prescription drug coverage. This applies to all States, including those with waivers of other standardization requirements. (See 42 USC 1395(ss)(v)(1)(A) and (v)(6)(A)(ii), as added by MMA section 104(a)).
- Incorporate the NAIC Model's revised definition of "Medicare eligible expenses," which expressly limits those expenses to the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and necessary by Medicare.⁷

Generally, states must implement the statutory changes and adopt the revised NAIC model regulation by September 8, 2005. States retain the authority to enact regulatory provisions that are more stringent than those that are incorporated into the NAIC Model Standards or in the statutory requirements.⁸

CMS is charged with verifying that each State has in fact amended its Medigap regulatory program as described above. We respectfully request that you notify us as soon as possible after the State amendments have been enacted, by completing and returning the enclosed checklist.

You may send the completed checklist to Dave Mlawsky or Julie Walton of my staff. You may send it by e-mail to David.Mlawsky@cms.hhs.gov, or to Julie.Walton@cms.hhs.gov. Or, you may send it by regular mail, to the attention of either Dave or Julie, at the following address:

CMS
7500 Security Boulevard
Mail Stop S3-16-16
Baltimore, MD 21244

We appreciate all the efforts your State has made in the past to ensure that Medicare beneficiaries receive all the protections Federal law gives to purchasers of Medigap policies. We look forward to continuing to work with you in this regard, and to receiving the completed checklist from you.

⁷ This revision reflects the position of CMS and the NAIC that Medigap policies cannot pay cost-sharing incurred under Medicare Part C (i.e., under Medicare Advantage plans). Additionally, the MMA specifies that Medigap policies held by individuals enrolled in Medicare Part D (i.e., the Medicare prescription drug program) cannot contain any prescription drug benefits. Thus, Medigap policies cannot pay cost-sharing under Part D.

⁸ 42 USC 1395(b)(1)(A)

Page 4 – State Insurance Commissioner/Director/Superintendent

If you have any questions regarding this letter, please feel free to contact Dave Mlawsky at (410) 786-6851, or Julie Walton at (410) 786-4622.

Sincerely,

/s/

Tom Hutchinson
Acting Director
Medicare Plan Policy Group

Enclosure